

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Robert H. Jackson
United States Courthouse
2 Niagara Square
Buffalo, New York 14202
Phone: 716-551-1700
Fax: 716-551-1705

MARY C. LOEWENGUTH
CLERK OF COURT

PATRICK J. HEALY
CHIEF DEPUTY CLERK

Kenneth B. Keating
Federal Building
100 State Street, Rm 6070
Rochester, New York 14614
Phone: 585-613-4000
Fax: 585-613-4035

November 8, 2021

William F. Allen
Akin, Gump, Strauss, Hauer &
Feld
Robert S. Strauss Bldg.
1333 New Hampshire Ave., N.W.,
Suite 400
Washington, DC 20036

Ray E. Donahue
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004

Kathryn Elizabeth White
Epstein Becker & Green
One Landmark Square,
Ste 1800
Stamford, CT 06901-2165

Patrick G. Brady
Epstein Becker & Green, PC
One Gateway Center
Newark, NJ 07102

David Seth Poppick
Epstein, Becker & Green, P.C.
250 Park Avenue
New York, NY 10177

Joel M. Cohn
Akin, Gump, Strauss, Hauer &
Feld
Robert S. Strauss Bldg.
1333 New Hampshire Ave., N.W.,
Suite 400
Washington, DC 20036

Olimpio Lee Squitieri
Squitieri & Fearon, LLP
32 East 57th Street
12th Floor
New York, NY 10022

In re: Costello et al v. Home Depot, Inc (Case No.: 1:12-cv-00474)

Dear Sirs and Madam:

I have been advised by Judge Richard J. Arcara who presided over the above-referenced action, that it has been brought to his attention that during the time the case was assigned to him, he or his spouse owned stock in Home Depot Inc. This stock ownership would have required recusal under the Code of Conduct for United States Judges. Although the only action taken by Judge Arcara was to approve the stipulation of the parties voluntarily dismissing the action, and the stock ownership neither affected nor impacted that action, Judge Arcara has directed that I notify the parties of this conflict.

Advisory Opinion 71, from the Judicial Conference Codes of Conduct Committee, provides the following guidance for addressing disqualification that is not discovered until after a judge has participated in a case:

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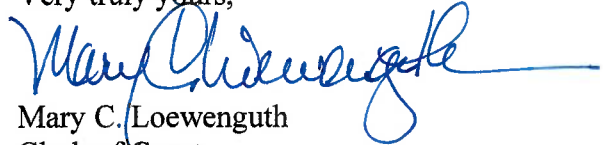
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[A] judge should disclose to the parties the facts bearing on disqualification as soon as those facts are learned, even though that may occur after entry of the decision. The parties may then determine what relief they may seek and a court (without the disqualified judge) will decide the legal consequence, if any, arising from the participation of the disqualified judge in the entered decision.

Although Advisory Opinion 71 contemplated disqualification after a Court of Appeals oral argument, the Committee explained “[s]imilar considerations would apply when a judgment was entered in a district court by a judge and it is later learned that the judge was disqualified.”

With Advisory Opinion 71 in mind, you are invited to respond to Judge Arcara’s disclosure of a conflict in this case. Should you wish to respond, please submit your response directly to me on or before November 29, 2021. Any response will be considered by another judge of this court without the participation of Judge Arcara.

Very truly yours,



Mary C. Loewenguth
Clerk of Court